IN THE HIGH COURT OF BOMBAY AT GOA,PANAJI

WRIT PETITION NO. 215 OF 2000

1. Shri Thomas Varghis;

2. Kum. Parab Sunita
   Chandrakant;

3. Shri Jeronimo Antonio
   Antao;

4. Shri Joseph T. Fernandes;

5. Kum. Gonsalves Anita
   Elizabeth Apolonia;

6. Shri Jose Paul;

7. Shri Anselmo Cecelia A.
   Ricardo;

8. Kum. Volvoikar Vilasini
   Bhiku;

9. Smt. Brigeethamma Thomas;

10. Shri Jose Maria D'Souza;

11. Kum. Banaulikar Aruna P.

All Junior Technicians,
Goa Medical College,
Bambolim-Goa. ... Petitioners.

versus

1. State of Goa,
   through its Chief Secretary,
   having Office at Secretariat,
   Panaji-Goa.

2. The Dean,
   Goa Medical College,
   Government of Goa,
   having Office at Bambolim-Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. H. R. Bharne, Government Advocate for the Respondents.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATED: 8TH JANUARY, 2003.

ORAL JUDGMENT(PER P. V. HARDAS, J.)

This Court, after hearing the learned Counsel appearing for the Petitioners and the learned Government Advocate appearing for the Respondents had allowed the Petition and rule was made absolute in terms of prayer clauses (a) and (b) with no order as to costs. The reasons are now being dictated separately.

2. The Petitioners after undergoing the regular process of selection were offered temporary posts of Junior Technician at the Goa Medical College in the pay scale of Rs.330-560. In pursuance to the selection of the Petitioners, the Petitioners were appointed as Junior Technicians on ad hoc basis at the Goa Medical College from the date of their joining. Ultimately, with effect from 20th February, 1990, the ad hoc appointment of the Petitioners came to be regularised. Along with the Petitioners, some persons had been appointed as Senior Technicians, who like the Petitioners had also been appointed on ad hoc basis and with effect from 20th February, 1990, their services also came to be regularised.

3. By Office Memorandum dated 5th July, 1989, Time Bound Promotional Scales to the employees of the Goa Government, who had continued in the same posts for a number of years without promotion was sanctioned to Group 'C' and 'D' with effect from 1st June, 1989. The scheme in its application was controlled by certain terms and conditions which inter alia were:-

1. The scheme would be applicable only to Group 'C' and 'D' Government employees including Group 'C' employees who are eligible to be promoted to Group 'B' posts. The scheme was not applicable to teaching staff for whom separate benefits under Chattopadhaya Commission's report had been extended.

2. The employees should have put in at least 12 years of service in the existing post.

3. The employees should possess the requisite qualifications prescribed for the next higher post.

4. The grant of Time Bound Promotional Scale should be recommended by the Departmental Promotion Committee.

5. The Time Bound Promotional Scale under the scheme shall be equal to the pay scale of the next higher post in the respective cadre/hierarchy and shall be given only once in the entire service.

6. The grant of Time Bound Promotional Scale will not be linked to the availability of higher posts since the benefit

is not a promotion but only a grant of higher scale due to non-promotion for 12 years and above.

7. The employees who are granted the benefit of Time Bound Promotional Scale will continue to hold the same on being granted Time Bound Promotional Scale, will be designated as L.D.C.(TBPS), since the new pay scale is personal to him. The grant of the benefit of higher scale shall not affect the prospects of regular promotion of the employees to the next higher post coming thereafter.

8. The pay of the employees who are granted Time Bound Promotional Scxle shall be fixed in the higher scale as the next higher stage to which the pay is drawn in the existing scale. The employees will have an option for fixation of their pay in the higher scale after the date of accrual of next increment in the existing scale. The option should be exercised within a period of one month. As and when the employees get their regular promotion to the next higher post, their pay shall be fixed under normal rules.

9. The next increment shall be granted after completion of normal incremental period of 12 months in the Time Bound Promotional Scale and will be payable from the first of the month in which the incremental period is completed.

4. The Respondent No.1 issued a further Office Memorandum dated 22nd December, 1989, for clarification of certain aspects. Clause 8 of the said Office

Memorandum reads thus:-

Points raised	Clarification
Whether the ad hoc service rendered against the post shall be counted in computing the 12 years period for grant of T.B.P.S.	The ad hoc service rendered will be counted in computing the 12 years period subject to the condition laid down in Government Notification No.2/38/75-PER(Vol.II) dated 11-4-1988.

5. In order to hold that the ad hoc service rendered by an employee will be counted in computing the 12 years period, the conditions laid down in the Government Notification dated 11th April, 1988, will have to be fulfilled. The three conditions in the Government Notification dated 11th April, 1988 are:-

1. There existed a regular vacancy.

2. The appointment was made as per then notified Recruitment Rules.

3. The appointment was made on the recommendations of a duly constituted Departmental Selection Committee/Departmental Promotional Committee and all eligible candidates as sponsored by Employment Exchange or falling in the zone of consideration, as the case may be, were considered.

6. The Government of Goa framed Medical College(Non-Ministerial, Non-Gazetted Posts) Recruitment Rules, 1966. In the year 1968, there was an amendment to the Rules with which, we are not at present concerned. The schedule appended to the rules refers to the appointment of Technicians. The qualifications prescribed are that the candidate should be a matriculate or equivalent and should have subsequently completed the Laboratory Technician Course from a recognised institution practically with two years experience in the line. It appears that by Order dated 6th December, 1982, the Government accorded its sanction for re-designation of the post of Techinican as "Junior Technician". The post of Technical Assistant was re-designated as "Senior Technician". The re-designated post of "Junior Technician" carried a pay scale of Rs.330-560.

7. The Government of Goa in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of the then existing Recruitment Rules framed new rules for the recruitment of Group 'C' and 'D' (Non-Ministerial, Non-Gazetted Posts) in the Goa Medical College. At Item No.9 of the schedule appended to the new rules the post of "Junior Technician" was declared to be a Group 'C' (Non-Ministerial, Non-Gazetted Posts), with pay scale of Rs.1200-3--1560-EB-40-2040. The Educational and other

qualifications were:-

1. S.S.C. or equivalent.

2. Laboratory Technician Course from a recognised institution and knowledge of Konkani and/or Marathi was held to be desirable.

8. On a representation made by the Petitioners for sanctioning the Time Bound Promotional Scale, the Respondents by their Memorandum dated 13th April, 2000 declined to count the ad hoc services rendered by the Petitioners for being counted for the purpose of Time Bound Promotional Scale in view of condition no.(ii) of the Notification dated 11th April, 1988. Condition No.(ii) of the said Notification mandated that the said appointment should have been made by the then Recruitment Rules.

9. In the Affidavit filed on behalf of the Respondents, it is stated that the Petitioners were appointed as "Junior Technicians" on ad hoc basis by an Order dated 18th April, 1983. At that time, according to the Respondents, the draft Recruitment Rules which related to the selection and appointment of the Petitioners had been submitted to the Government to be notified after necessary approval. In para 11 of the

Affidavit, it is further stated that had the Petitioners been appointed under the Recruitment Rules of 1966, there was no reason to appoint them on ad hoc basis since there were regular vacancies of Junior Technicians. In para 17 of the Affidavit, it is stated that the new rules were notified on 8th February, 1990 and the Petitioners would be entitled to Time Bound Promotional Scales only after 12 years from that date. Thus, according to the Respondents, the Petitioners had not been appointed under the Recruitment Rules of 1966.

10. We have given our anxious consideration to the rival submissions advanced before us. Mr. M. S. Sonak, the learned Counsel appearing for the Petitioners has brought to our notice that the Recruitment Rules, 1966 related to various posts including the post of Technician. The Government of Goa by its Order dated 6th December, 1982, sanctioned the re-designation of the post of Technician to "Junior Technician". The new rules admittedly came into existence and were published in the Gazette dated 8th February, 1990. These new rules were in supersession of the existing rules for the posts of Group 'C' and 'D'. Undisputedly, till such time as these new rules came into force the Recruitment Rules, 1966 were in force relating to the recruitment of Group 'C' and 'D' posts. The Petitioners undeniably were appointed on ad hoc basis as "Junior Technicians" after the

re-designation of the post of Technician to that of "Junior Technician", when the 1966 Rules were in force.

11. Mr. H. R. Bharne, the learned Government Advocate appearing for the Respondents has invited our attention to the Minutes of the Departmental Selection Committee which was held on 17th February, 1983. Mr. Bharne, the learned Government Advocate has tried to urge on the basis of the Minutes of the Departmental Selection Committee that the Departmental Selection Committee had made appointments of the Petitioners on the basis of the Draft Rules and as such, according to him, since these rules were not in existence, the Petitioners had not been appointed on the basis of any existing rules and, therefore, the Petitioners ad hoc service cannot be counted for Time Bound Promotional Scheme. Mr. Bharne, the learned Government Advocate read the following paragraph from the Minutes of the Departmental Selection Committee which is reproduced below:-

> "The Committee was informed that as per the draft recruitment rule submitted to Government, the post of Junior Technician is proposed to be filled 50% by promotion of Laboratory Assistant and Media Maker possessing S.S.C. or equivalent and with 3 years experience in the Dept. failing which by direct recruitment, and the remaining 50% by direct recruitment of

> persons possessing the essential qualifications S.S.C. or equivalent and Laboratory Technicians course from a recognised Institution".

12. A perusal of the above quoted paragraph from the Minutes of the Departmental Selection Committee will be clear that the submission of the learned Government Advocate is wholly misconceived. Perusal of the above paragraph does not show that either the Petitioners were selected or they were recommended for appointment on the basis of Draft Recruitment Rules. The Petitioners had been appointed as per the Recruitment Rules, 1966 which rules were in force on the date of their appointment. The Recruitment Rules, 1966 were in force till such time as they were superceded by the new rules which were notified in the year 1990. Thus, according to us, the submission of the Respondents is devoid of any merit.

13. We, therefore, allow the Petition and make Rule absolute in terms of prayer clauses (a) and (b) with no order as to costs.

D. G. DESHPANDE, J.

P. V. HARDAS, J.

RD.